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C O N F I D E N T I A L BRUSSELS 000697

SIPDIS

STATE FOR EUR/WE, IO AND S/CT

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TAGS: PTER ETTC PGOV PREL KTFN UN BE

SUBJECT: BELGIUM DESIRES TO "PRESERVE UNSCR 1267" BY ADDING PROCEDURES "CLOSER TO DUE PROCESS"

Classified By: Political Economic Counselor Richard Eason, reasons 1.4(b) and (d).

¶1. (C) On May 13, Charge met with Thomas Baekelandt, Counter-Terrorism Coordinator at the Belgian Ministry of Foreign Affairs. Baekelandt said that sanctions under UNSCR 1267 against terrorist financing entities such as Al Barakat have been challenged in Belgian courts and in the European Court of Justice. He warned that a decision of the European Court of Justice (understood to be Kadi vs. European Council and European Commission) risks undermining the UN Security Council in its authority to impose sanctions. He said that while U.S. courts view the seizure and freezing of assets under UNSCR 1267 as administrative actions, civil law European courts tend to view them as punitive. Moreover, UN sanctions are directly applicable and enforceable in Belgian and other European courts, Baekelandt said. As a result, the European courts are demanding more "due process", for example a right of appeal from the decision to place an entity on the sanctions list. Baekelandt worries that if sanctions under UNSCR 1267 cannot be enforced in Europe it will mean a return to the "law of the jungle."

¶2. (C) Baekelandt observed that UNSCR 1822 improved the procedures used by the Sanctions Committee, and Belgium is interested in seeing it implemented in full. The GOB would also like to see that resolution broadened by adding procedures that will make it more palatable to European courts. In that regard, "likeminded" countries, including Belgium, Germany, Denmark and Sweden, are working on a strategy to convince the permanent members of the Security Council, including the Russians and the Chinese, that it is in their interest to make changes that will preserve the sanctions' enforceability. Baekelandt said Belgium does not favor a Swiss proposal to create a review panel for listing decisions made by the Security Council, and views such ideas as too politically unacceptable to be realistic. However, the Belgians and "like-minded" countries intend to try to "calm down" the Swiss by proposing modifications to 1267 procedures, beyond those already adopted in UNSCR 1822. This would involve allowing entities targeted by sanctions to submit comments to the UN about the listing decision. Baekelandt said he sees the time frame for achieving the changes desired by Belgium as being one or two years.

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